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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,648	07/10/2003	Brian C. Powell	00275-00136-US	3448

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EXAMINER
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MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/616,648

Applicant(s)

POWELL ET AL.

Examiner

Joseph C. Merek

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/25/04</u> . | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Baudisch et al (US 4,482,522). Regarding claim 1, the device of Baudisch et al is capable of holding condiment containers as seen in Fig. 2. The intended use does not require any structure that is not in the reference. The bottom and the end walls have the circulation openings. The other two walls are partial walls as they have openings in them. Regarding claims 2 and 3, see fig. 2, the openings in the sidewalls and the bottom are both circular. Regarding claim 4, the all the walls are joined together as seen in Fig. 2. Regarding claim 5, see Fig. 2. Regarding claim 7, the openings in the top number 4 as seen in Fig. 2. Regarding claim 10, the device is used with a plurality of containers in the openings. The containers are capable of holding condiments.

Claims 1, 2, 4, 5, 6, 7, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Comer (US 2,459,921). Regarding the claims, see Figs. 1-4, where the structure is shown. The holes in the bottom are round. 17 and 19 are the openings in the sidewalls.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sochurek, Sr. (US 966,258) in view of Savage (US 531,067). Regarding claim 1, Sochurek teaches the claimed invention but does not teach the holder having a top with openings for receiving the bottles or containers. Savage teaches a similar structure with a top with openings for receiving the bottles. It would have been obvious to employ the top of Savage in the tray of Sochurek, Sr. to provide a stronger tray and to prevent contact between the bottles or containers. Regarding claim 6 and 7, see Savage where the number of openings is 8, which includes the claimed 4. Regarding claim 9, see Fig. 1 of Sochurek, Sr. where the peripheral lip is C.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sochurek, Sr. in view of Savage as applied to claim 9 above and further in view of Snell (US 4,947,991). The modified device of Sochurek, Sr. does not teach the tray in combination with squeeze bottles. Snell teaches a similar tray with squeeze bottles for condiments. It would have been obvious to employ the squeeze bottles Snell in the tray of Sochurek, Sr. to provide a beverage and food holder as taught by Snell.

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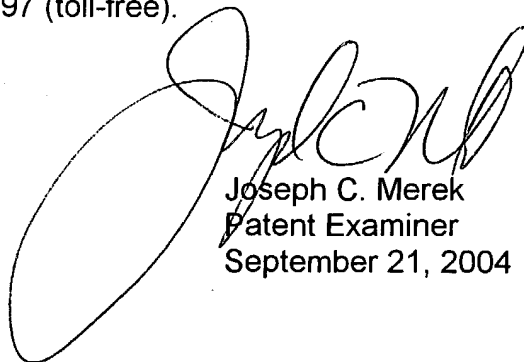
### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Costantini et al (US 3,019,620), Ellis (US 3,254,502), and Broadwin (US 3,379,315) are all cited for there structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Patent Examiner  
September 21, 2004